



Two judgments concerning care orders issued for children in Norway

In today's **Chamber judgments**¹ in the cases of [A.L. and Others v. Norway](#) (application no. 45889/18) and [E.M. and Others v. Norway](#) (no. 53471/17) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights in respect of A.L. and Others, and

no violation of Article 8 in respect of E.M. and Others.

A.L. and Others concerned a care order issued by the Norwegian authorities in respect of the applicant child and the limitations imposed on the parents' contact with that child, following questions around the child's safety in their care.

E.M. and Others concerned the refusal by the Norwegian authorities to lift a care order in respect of the two applicant children, an order removing the first applicant's parental responsibilities, and the refusal to grant her contact rights. The authorities had had concerns around physical and sexual abuse.

The Court found in particular that in the case of *A.L. and Others*, although the care order had been well-reasoned, the domestic courts had effectively decided that the child should grow up in foster care without considering alternatives or working towards reconciliation, in violation of the applicants' Article 8 rights.

However, in *E.M. and Others* the Court held that the domestic proceedings had been carried out in accordance with the Convention, with adequate reasoning and individualised decisions. It noted furthermore the seriousness of the risk to the children that had informed the domestic court decisions.

Principal facts

A.L. and Others

The applicants in this case, A.L., S.M., X and J.L., are Norwegian nationals bar Ms J.L., who is a Slovak national (two parents, their child, and the child's grandmother respectively). They live in Norway and Slovakia.

In 2015 X, then an infant, was taken into emergency foster care after being removed from hospital early and the refusal of the various aid measures offered by the authorities. There were, in particular, worries over the child's development. The parents were given supervised contact rights of one hour per fortnight. Those decisions were upheld by the courts.

The contact rights were subsequently reduced by the child welfare services, eventually to one hour every three weeks after amendment by the County Social Welfare Board (*fylkesnemnda for barnevern og sosiale saker*).

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

Following a mistrial owing to bias on the part of a judge, argument over the care decisions was heard by a different court. The new District Court assessed the child's personality, history, development and possible physical, mental, social and emotional challenges. The court found that there were issues around parental interaction with the child. It noted some delays in the child's development, and evidence that the parents had difficulty understanding the child's needs.

Overall, the District Court found that there would be serious deficiencies in X's care if she were returned to the first and second applicants. It set contact at one hour, three times per year.

The applicants were refused leave to appeal against the decision by the High Court.

E.M. and Others

The applicants in this case, E.M., B and C, are Czech nationals. They are a mother and her two children respectively. They live in Norway and the Czech Republic.

E.M. moved to Norway in 2005 and had B and C there. The children were placed in emergency care in 2011 because of concerns relating to sexual abuse and violence. In 2012 they were taken into public care by the County Social Welfare Board and placed with a foster family. That decision was upheld by the District Court, which denied contact rights, citing serious neglect and physical abuse, but making no comment on alleged sexual abuse.

The parents appealed against the denial of contact rights, with only E.M. being given leave to appeal by the High Court, which overturned the decision and ordered two hours contact twice a year. It stated that it did not believe that E.M. had sexually abused the children, without making a decisive finding in that regard, but did consider that she had failed to shield them from their father's abusive behaviour. Overall, the court found her to have the potential to create good contact with the children in the future, supporting them in their new foster home. She was refused leave to appeal to the Supreme Court.

The European Court declared her application concerning the above facts inadmissible in 2014.

In 2014 E.M. applied to have the care order lifted. The child welfare services countered, arguing that the children should be adopted and that E.M. should lose her parental rights. The County Social Welfare Board decided to maintain the care order and to remove E.M.'s parental and contact rights. They referred to, among other things, E.M.'s having exposed the situation of B in the media on hundreds of occasions, including with images, linking him to sexual abuse, all of which had been stressful for the child.

E.M. appealed. The District Court noted the overall development of the two children and the progress made by their mother. However, it also noted, in particular, that B was suffering from post-traumatic stress disorder, that the foster parents had been contacted by the media owing to sensitive information including photos of them having been posted on the Internet by E.M. and the fact that B did not want to live with his mother. It held that lifting the care order and renewal of contact would be against the children's interests. It ordered that C's adoption be allowed.

The High Court refused E.M. leave to appeal. The Supreme Court finally dismissed her subsequent appeal in January 2017.

Complaints, procedure and composition of the Court

Relying on Articles 8 (right to respect of private and family life) and 6 (right to a fair trial), the applicants in *A.L. and Others* complained of the decisions in respect of the care of the child applicant, in particular the care order and the limitations imposed on the first and second applicants' right to contact with the child.

Relying on Article 8, the applicants in *E.M. and Others* complained of the decision not to lift the care orders in respect of the child applicants, the decision to deprive the first applicant of her parental responsibilities, and to refusal to grant the first applicant any contact rights.

The applications were lodged with the European Court of Human Rights on 19 September 2018 and 18 July 2017 respectively.

Third-party comments were received from the Governments of Slovakia and the Czech Republic in both cases.

Judgment was given by a Chamber of seven judges, composed as follows:

Síofra **O’Leary** (Ireland), *President*,
Mārtiņš **Mits** (Latvia),
Ganna **Yudkivska** (Ukraine),
Lətif **Hüseynov** (Azerbaijan),
Lado **Chanturia** (Georgia),
Mattias **Guyomar** (France) and,
Anne **Grøstad** (Norway), *ad hoc Judge*,

and also Victor **Soloveytchik**, *Section Registrar*.

Decision of the Court

The Court noted that the fourth applicant in *A.L. and Others*, J.L., had not been a party to or sought to join the domestic proceedings, and had also not instituted other proceedings. She had therefore not exhausted the domestic remedies and the part of the application concerning her was thus inadmissible.

Article 8

A.L. and Others

The Court held that there had certainly been an interference in the family lives of the applicants in this case that had a legal basis.

It did not find that the applicants had been prevented from participating in the court proceedings that had led to the care order. The order had been made owing to the inadequacy of the care of X. The Court considered that the reasons for the care order had been sufficient. It noted, however, that the order had been issued after a long period of State-involvement, including stringent limits on contact, in the family’s affairs.

Concerning contact, the Court found the restrictions imposed to have been severe, and probably detrimental to the aim of reunification of the family. The domestic authorities had effectively decided that the child would grow up in foster care, without considering alternatives. Overall, the case had been similar to others in which the Court had found violations against Norway previously.

There had been a violation of Article 8 in this case.

E.M. and Others

The Court was satisfied that the care order had been a lawful interference with the applicants’ rights.

Concerning the necessity of the interference, the Court noted that the proceedings had been extensive and conducted satisfactorily. It furthermore held that the final decision to continue the care order, refuse contact rights, and withdraw parental responsibilities had been satisfactory. It noted in particular the domestic court’s reference to serious neglect, physical and sexual abuse, and

the fact it had heard the children, and delivered individualised decisions in respect of each of them. Overall, the reasoning had been adequate and had been within the discretion of the domestic authorities. Mention also had to be made of the first applicant's aggravating of the situation, in particular by publishing personal information on the Internet.

Given the opinions put forth by and the psychological situation of the children, the Court held that the domestic court had sufficiently justified its decision to withdraw the mother's contact rights for both children.

Overall, the domestic authorities were attentive to the need to maintain the relationships at issue in the case.

The interference with the applicants' rights had overall been necessary. There had been no violation of Article 8 in this case in respect of the first applicant. Regarding the applicant children, the Court noted the Government's argument that there was a conflict between the first applicant's interests and theirs. Mindful that there had been serious joint parental child neglect in this case, the Court agreed that there was just such a conflict of interest and rejected the applications on behalf of the applicant children.

Other articles

The applicants in the case *A.L. and Others* complained that the proceedings had not been carried out within a reasonable time under Article 6. The Court noted the complexity of the case at hand, in particular the observation of the children over time by experts, and the procedural actions including emergency decisions and referrals to the domestic courts. Given that the length of time had been justifiable, it found the complaint manifestly ill-founded and rejected it.

Just satisfaction (Article 41)

The Court held that Norway was to pay the first and second applicants in *A.L. and Others* jointly 25,000 euros (EUR) in respect of non-pecuniary damage and EUR 500 in respect of costs and expenses. It held that a finding of a violation was sufficient in respect of the third applicant in that case.

The judgments are available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.